

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2010-126
)	
Kaplan Nursing)	
)	
)	
Greenville Technical College)	POSTING DATE: October 4, 2010
RFP No. GTC 10-037)	
)	MAILING DATE: October 4, 2010
<u>NCLEX Course Delivery</u>)	

This matter is before the Chief Procurement Officer (“CPO”) pursuant to a letter of protest from Kaplan Nursing (“Kaplan”). With this request for proposals (“RFP”), Greenville Technical College (“GTC”) seeks to procure “a qualified vendor to provide NCLEX PN & RN Prep course delivery service to nursing curriculum students.” (Ex. 1, p. 9, III. Scope of Work/Specifications) Kaplan protests GTC’s notice of intent to award to Assessment Technologies Institute, LLC (“ATI”) based on Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code (“Code”). In its protest, Kaplan challenges the evaluation process.

In order to resolve the matter, the CPO conducted a hearing September 22, 2010. Appearing before the CPO were Kaplan, represented by Jon Zeitlin, General Manager/Vice President; ATI, represented by Steve Brummett, Client Service and Sales Representative; and GTC, represented by Bill Tripp, Procurement Manager.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On June 7, 2010, GTC published the RFP. (Ex. 1)
2. On June 15, 2010, GTC conducted a pre-proposal conference. (Ex. 1)
3. On June 17, 2010, GTC issued Amendment # 1. (Ex. 1)
4. On July 30, 2010, after evaluating the proposals, GTC posted a notice of intent to award to ATI. (Ex. 5) The composite scores of the evaluators were as follows:

<u>Offeror</u>	<u>Total Score</u>
ATI	272
Kaplan	230
Elsevier	199
NLN	141
(Ex. 2)	

5. On August 9, 2010, the CPO received Kaplan's protest letter.

DISCUSSION

Pursuant to Section 11-35-2410(A) of the South Carolina Consolidated Procurement Code ("Code"), a determination by the State as to which proposal is the most advantageous, after taking into consideration price and the other evaluation criteria, is final and conclusive unless such determination is "clearly erroneous, arbitrary, capricious, or contrary to law." On several occasions, the South Carolina Procurement Review Panel ("Panel") has held that it [the Panel] will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as they follow the requirements of the Code and the RFP, fairly consider all proposals, and are not actually biased. See, e.g. Protest of Santee Wateree Regional Transportation Authority, Case No. 2000-5; Protest of First Sun EAP Alliance, Case No. 1994-11;

Protest of Volume Services, Case No. 1994-8; Protest of Coastal Rapid Public Transit Authority, Case No. 1992-16. These cases also make it clear that the protestant bears the burden of proof to demonstrate by a preponderance of the evidence that the evaluators' determinations were flawed. Id. Moreover, the Code does not require the evaluators to look beyond the information that is submitted by the offeror in its proposal. Protest of Travelsigns, Case No. 1995-8.

Kaplan essentially alleges that the evaluation process was flawed because each of the three evaluators' determinations was clearly erroneous. At the hearing, Kaplan admitted that the evaluators did not act arbitrarily, capriciously or contrary to the law. Instead, Kaplan pointed to several examples which it claims demonstrate that the evaluators were erroneous, or incorrect.

Specifically, Kaplan argued that evaluator Tammy McConnell, Admissions Coordinator and Nursing Instructor at GTC, erroneously scored the Service Requirements section of the Awards Criteria based on her comments that Kaplan's proposal: 1) was unclear on whether the scores on the NCLEX Predictive Tests for Practical Nursing ("PN") tests were normed or compared to national averages; and 2) contained weak remediation materials.¹ Ms. McConnell testified and explained that it was very important that the predictive tests were normed because that would provide a good indication if a student was likely to pass the National Boards. She explained that she relied on the tables on pages 2 and 3 of Kaplan's proposal, which said that these tests were normed for the Registered Nurse ("RN") program but did not indicate they were normed for the PN program. She also explained that the amount of remediation materials offered by Kaplan was less than that offered by the other vendors. Kaplan also questioned Ms. McConnell's scoring of the Program Support section, namely her comment that its proposal lacked comparison of student cohort and the nation. Ms. McConnell explained that this requirement was important in order for GTC to compare its students with the nation. However,

¹ During the hearing, Kaplan withdrew its additional question regarding evaluators' comments that it had failed to offer multiple versions of tests. Kaplan acknowledged that the RFP required multiple versions and that it did not provide.

she pointed to page 4 of Kaplan's proposal where it failed to specify it allowed comparison nationally. Despite raising the allegation, Kaplan acknowledged at the hearing that it left out a bullet point in its proposal that contained this requirement.

As to evaluator Margaret Kroposki, Assistant Dean of Health Sciences and Nursing at GTC, Kaplan argued that her scoring in the Service Requirements section was erroneous based on her comment that its proposal contained weak remediation materials.² At the hearing, Dean Kroposki explained the importance of remediation in their programs and explained that the table on page 2 of Kaplan's proposal failed to address remediation. Dean Kroposki further explained that while Kaplan had mentioned it offered online remediation materials in the text on page 2 it had only offered two examples and it was unclear if it applied to both the PN and RN programs.

Kaplan also questioned evaluator Lydia Dunaway, Assistant Dean of Health Sciences and Nursing at GTC, regarding her scoring in the Program Support section, namely her comment that Kaplan did not list any student or faculty technical support. Dean Dunaway explained that the chart provided by Kaplan on page 5 of its proposal had left blank the names of the Kaplan team member responsible for student as well as faculty technical support and customer service. She explained that this concerned her because she believed that this indicated that Kaplan did not have a point person to address GTC's needs in these areas. Kaplan did not question Dean Dunaway regarding her comment that Kaplan's proposal lacked curriculum support for the PN program.

DETERMINATION

The CPO finds that Kaplan did not present any evidence that GTC departed from the standards set forth in the Code and the RFP. No evidence was presented that the evaluators disregarded all or

² As previously stated, Kaplan withdrew its additional question regarding evaluators' comments that it had failed to offer multiple versions of tests.

any portion of Kaplan's proposal or scored it erroneously or unfairly relative to the other proposals. To the contrary, the evidence in this case is that the evaluators considered only the information contained in its proposal and applied only the factors listed in the RFP. Further, Kaplan failed to prove that the judgments the evaluators made of Kaplan's proposal, based on the information contained in the proposal, were clearly erroneous. In fact, based on the evidence presented, the evaluators' determinations were reasonable and fair. Therefore, Kaplan did not meet its burden of proof to demonstrate that the evaluators' determinations were clearly erroneous, arbitrary, capricious, or contrary to law. Accordingly, this protest is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

October 4, 2010

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2010-2011, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

August 9th, 2010

Mr. Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Shealy,

After reviewing the Greenville Technical College NCLEX Course Delivery scoring results (Solicitation GTC 10-037), Kaplan Nursing would like to respectfully protest the Intent to Award decision. It is the opinion of Kaplan Nursing that our responses to this solicitation was materially misunderstood and appreciate this opportunity to clarify.

Our protests and clarifications as listed as follows:

A. Service Requirements

Protest 1: Comments from evaluators indicated that "lack of curriculum support" and "weak prep" for PN students as grounds for point deductions.

Clarification 1: *Our PN offerings are every bit as robust as our RN offerings, however we believe that the proposal may have caused difficulties for evaluators in understanding our PN offerings.*

Support for the PN curriculum includes eight Focused Review tests and online learning modules in the form of streaming lessons-on-demand, similar to our offerings for the RN curriculum. Focused Review tests are 32-question tests that allow students to practice their mastery of topics, and can be assigned as homework or as in-class exercises. Streaming lessons-on-demand, taught by our expert faculty, feature exam-style questions, critical thinking skills and content, available online to your students 24/7.

Our NCLEX-PN review course was developed by the same expert nurse educators who created our nation leading NCLEX-RN review. The cornerstone of our program, the Kaplan Decision Tree, has also been tailored to the scope of practice appropriate for PNs. We are confident that our robust online resources, critical thinking focus and effective content review comprise the nation's most comprehensive review course for PN students.

Protest 2: Weak remediation information

Clarification 2. *It's possible that evaluators were looking simply for breadth of remediation information rather than quality and ease-of-use.*

Our program is designed purposefully and deliberately to be simple and easy to use, with a focus of quality over quantity. We believe that a program that allows them to access remediation information quickly and efficiently is the type of program that will best fit into a busy nursing student's life.

With our Integrated Testing program, we bring your students the highest quality content from LWW's *Incredibly Easy* series, organized into three levels of remediation. This allows students to dig down into the level of detail that applies to them, keeping their studying targeted and efficient. While considering the physical materials offered to students in our partner institutions, we designed our program conscientious of the demands in the lives of our students. Instead of heavy textbooks that are difficult to transport and cumbersome to learn from, we made our resources easy to access online, while supplying the Kaplan *Basics Book* as an effective supplementary tool.

Protest 3: Multiple version of tests unavailable

Clarification 3: We do offer multiple versions of our Exit Tests. ***We purposefully offer only one version of our secure, end-of-course exams because we believe students learn by spending time on remediation rather than by taking tests.***

As part of our implementation process, we strongly recommend that students take our end-of-course tests and then take significant time reading our online remediation material. In fact, we believe so strongly in the power of remediation that we recommend that time spent on remediation as a factor that is included in overall course grading. This is a very different, and we believe superior, approach to our competitors who stress taking tests over and over again and thus need to supply multiple versions of each test.

B. Work and Transition Plan

No clarification necessary.

C. Program Support

Protest 4: All three evaluators stated that "no student or faculty technical support listed" as a factor in their scoring of our Partner Proposal's Program Support criteria.

Clarification 4: ***We feel that these point deductions were made due to a misunderstanding of a chart that we included in our RFP response.***

All three evaluators indicate that a reason for point deduction was that no student or faculty technical support was offered by our program. The following chart was included in page 5 of 7 of Kaplan Nursing's NCLEX Course Delivery Partnership Proposal. In the 3rd column, under "Position" for Student and Faculty technical support, we have listed "Student Services" and "Integrated Support" (circled in red). While no specific individual has been identified as Greenville Technical College's technical support liaison, this is due to the fact that we offer our clients a fully staffed support team, who work together to solve technical and customer service issues. These well trained teams will be able to address your program's needs in more timely and efficient manner than the attention of any single

service contact alone. The contact information for these teams will be relayed upon the implementation of the program.

Your Need	Kaplan Team Member, Position	
Determining program goals		
Scheduling Orientation		
Student/Faculty Training	Becky Oglesby, RN	Service Consultant
Optimize report usage		
Local Support –		
Shipping materials		
Test proctoring	Kevin Smith	Greenville Center Director
Student Orientation		
Student technical support		Student Services
Student customer service		
Faculty technical support		Integrated Support
Faculty customer service		(National Operations team)

Protest 5: Evaluator 2 awarded Kaplan Nursing 10 out of the maximum 20 points, stating that our program “lacks comparison of student cohort and nation”.

Clarification 5: *Our Integrated Testing program includes the ability to compare student cohorts to the nationally normed average in several of our reports.*

Included below is an example of a Faculty cohort report that allows faculty to compare their cohort performance (circled in red) with the national average (circled in blue). As one of the core purposes of our nationally normed end-of-course tests is to allow our partners to benchmark their performance, the ability to compare against the normed average is available on all relevant reports.



